New-Pork Daily Tribune

THE SNOW MIRACLE .. For The Tribune

The fairies are not dead—
The fairies of our childhood, long ago!
There is an angel walking over head
When frosty caves are hung with icy curls, And January shivers in the snow! [words— She speaks unto the North Wind, and her A miracle! a miracle!—are pearls! Lo! how they flutter down, And fill each secret nook, The willow-hidden brook, And the house-tops of the town And the chimneys as they look, With yawning mouths, to all The flakes, till in a pall

Of white the earth is hid! The pearls, the crispy pearls Lo! how they flutter down From the snowy angel's lips! Till the hemlock and the pines, And the ghastly poplar trees, [ships | Are like the shrouds and rigging of the Lo! how they flutter down, So wendrously complete— So marvelously wrought— And in the stifled town, Each half-deserted street Is piled with her white thought!

O, we are blind and weak-We daily yearn and seek For miracles like those of long ago: We mosn and murmur still, As if this falling snow Were not a Miracle! T. B. ALDRICH.

RELATIVE POWERS

OF THE

FEDERAL AND STATE JUDICIARIES.

From Judge Smith's Opinion in the case of Sherman M. Booth, 5 Wisconsin R., pp. 22—29.

Believing, as I do, that every State officer who is required to take an oath to support the Constitution of the United States as well as of his own State, was designedly placed by the Federal Constitution itself as a sentinel to guard the outposts as well as the citadel of the great principles and rights which it was intended to declare, secure and perpetuate, I cannot shrink from the discharge of the duty now devolved upon me. I know well its consequences, and appreciate fully the criticism to which I may be subjected. But I believe most sincerely and solemnly that the last hope of free, representative and responsible government rests upon the State sovereignties, and fidelity of State officers to their double allegiance, to the State and Federal Governments; and so believing, I cannot hesitate in perrepresentative and responsible government rests apon the State sovereignties, and fidelity of State officers to their double allegiance, to the State and Federal Government; and so believing, I cannot hesitate in performing a clear, an indispensable duty. Seeking and enjoying the quiet and calm so peculiar to the position in which I am placed, I desire to mingle no further in the political discussions of the times than the clear suggestions of official obligation require. But he who takes a solemn oath to support the Constitution of the United States, as well as of the State of Wisconsin, is bound by a double tie to the nation and his State. Our system of government is twofold, and so is our allegiance. Federal officers feel less of this, because their oath binds them only to the Constitution of the United States; but State officers have the weight of both resting upon them. To the latter, is peculiarly the duty assigned, or rather upon the latter, of necessity does the obligation rest, of ascertaining clearly and of asserting firmly the peculiar powers of both Governments, as circumscribed by the fundamental law of each. To yield a cheerful acquiescence in and support to every power constitutionally exercised by the Pederal Government, is the swam daty of every State officer; but it is equally his duty to interpose a resistance, to the extent of his power, to every a sumption of power on the part of the General Government which is not expressly granted or necessarily implied in the Federal Constitution.

Nor can I yield to the doctrine early broached, but as early repudiated, that any one department of the Government is constituted the final and exclusive judge of its own delegated powers. No such trabunal has been erected by the fundamental law. The judicial department of the Federal Government is the creature by compact of the several States, as sovereignties, and their respective people. That department can exercise no power not delegated to it. All power not delegated remains with the Federal Judiciary is

croachment of the former, becomes every day more and more imperative, and the official oath of the functionaries of the States becomes more and more significant. As the power of the Federal Coverament depends solely upon what the States have granted expends solely upon what the States have granted by pressly or by implication, and as no common judg-been provided for, to determine when the one of other shall be proved unfaithful to the compact solemn pleage of faith exacted from both has deemed an effectual guaranty; and a frequency deemed an effectual guaranty; and a frequent resurrence to the fundamental principles on which on clovernment is organized, a sufficient stimulus to every
public officer and to the people at large, both to yield
and exact a perfect conformity. But I solerably believe that the last hope of free representative and federative government rests with the States. Increase of
influence and patronage on the pair of the Federal
Government naturally leads to consolidation, consolidation to despotism and ultimate anarchy, dissolution
and all its attendant evils.

If the convenients of the States is destined to be

and all its attendant evils.

If the sovereignty of the States is destined to be swallowed up by the Vederal Government, if e-nsolidation is to supplant federation, and the General Government to become the sole judge of its own powers, ernment to become the sole judge of its own powers, regardless of the solemn compact by which it was brought into existence, and of the source of its own vitality, as an bumble officer of one of the States, bound to regard the just rights and powers both at the Union and the States, I want my skirts to be clear, and that posterity may not lay the catastrophs to my charge. I am traly thankful for the same tening of conscientions firmness on entering upon the discharge of the duty before me, as would be required in case of direct invasion, open rebellion, or pulpable tenason, against our common country. against our common country.

Without the States there can be no Union; the ab-Without the States there can be no thion; the abregation of State sovereight, is not a desolution of the
Union, but an absorption of its elements. The is the
true man, the faithful efficer, who is ready to assert
and gaard every jet of power rightfully belonging to
each, and to resist the slightest energy harmon or assumption of power on the part of either.

The Constitution of the United States is a peculiar
instrument, and it has brought into an stence and operation a peculiar system of government. But little
if any aid is furnished in its construction by analogy,
it is not merely a grant of powers. It not only confers

if any aid is furnished in its construction by Almory. It is not merely a grant of powers, it not only contempowers upon the Federal Government, but it guarantees rights to the States and to the citizens. It was not designed merely to provide a general government for all the States, but to provide scenarily and protection for the States and people, who are parties to the compact by which it is created. Not only did it confer certain powers upon the General Government, but it imposed solemn duties upon the Government thereby created, and upon the States who were its creators. More than this, it solemnly enjoined upon both the More than this, it solemnly enjoined upon both the State and General Government, the exercise of certain powers and duties, and the abstaining by each, from the exercise of powers and functions exclusively pertaining to the other.

It is an instrument of grams and covenants. Somewhat like an indenture of conveyance, it couts as not only grants of power, but covenants for the farthing observance of the stipulations therein contained. It counts there distinct departments of Government, the

what like an indenture of conveyance, it contains not only grants of yower, but coverants for the faviliance of the stipulations therefore on the stipulation of the forest amount of the forest upon the consideration of the positive of the stipulations therefore on the stipulation of the grants of coverance, the factor each the powers which it was designed that they stood or probabilited to the States, it especially reserved to the States, and the people of the Union now impress their will respectively exercises and these powers or granted or probabilited to the States, the specially reserved to the States, the states and the people. In addition to this, the States, parties to the instrument, by it solembly and maturally certain things shead not be done either by the Government about to be created, and covenants entered ato between power to be conferred on the Government about to be created, and covenants entered ato between power to be conferred on the Government about to be created, and covenants entered ato be tween the parties, as States, they had an application of the properties of the Constitution, but no other, because all others are especially reserved to the States and to the people of the Constitution, but no other, because all others are especially reserved to the States and to the people of the Constitution, but no other, because all others are especially reserved to the States and to the people of the Constitution, but no other, because all others are especially reserved to the States and to the people of the Constitution, but no other than the property of the Constitution, but no other than the property of the Constitution, but no other than the property of the Constitution of the Constitution of the constitution, but no other than the property of the Constitution of the Union of the Constitution of the property of the Constitution of the Union of the Constitution of the property of the Constitution of the Constitution of the Union of the Constitution of the Constitution of the Union of the Constit

"make anything but gold and silver coin a legal ten"der, pass any bills of attainder, se post facto law, dy
"any law impairing the obligation of contracts," &c.
Now suppose, in violation of this compact, any State
should do any of the things herein prohibited. Is it
pretended that Corpress has the right to make such
acts on the part of the officers of the State penal! or
by legislation call such offending State to account?
exclude it from the Union! expel its Representatives
from their seats! arrest its Executive, its legislators
and Judges, and imprison them! The acts of such
State would be simply void; and it would be the duty
of all Courts, both Federal and State, so to declare
them. They would afford no protection to any person
or officer acting under them—not because Congress
has any legislative power to denounce or abrogate
them, but because they are in violation of the fundamental law.

mental law.

So, also, in the same section are contained sundry prohibitions upon the United States, among which is the following: "The privilege of the writ of habeas "corpus shall to be suspended, unless when in cases "of rebellion or invasion the public service may re"quire it." Suppose, in a time of profound peace and quiet, the Federal Government should pass a law and quiet, the Federal Government should pass a law suspending the privileges of this writ, would the State Governments have the power to call to account the Federal officers who had violated the compact in this behalf? the Congress who passed, and the Executive who approved it? Would the State Courts be bound by it? Not at all. Such an act of Congress would simply be void, and it would be the duty of every State and Federal Court so to pronounce it, and it would afford no protection to any officer, State or Federal, for refrising to obey such writ. I mention these illustrations to show that a great portion of our Federal Constitution rests in compact, while still another rests in grant. Where powers are granted, they are to be exercised; where rights rest in compact, they have still the force of law; but the Federal Government has no power to legislate upon them; they are to be obeyed and enforced by the parties to the compact, the States themselves.

From Judge Smith's Opicion in the same case when before the full

the States themselves.

From Judge Smith's Opin on in the same cons when before the full Court, 3 Wisconsin R., pp. 57-106.

Smith, J.—When this case was originally before me I gave to the queet one involved in it all the investigation which the means then within my reach would pernait. The conclusions to which I then arrived have been made, and rightfully made, the subject of criticism and investigation. In addition to what I then said, I have now o remark that there are some principles involved in this case not noticed in my former opinion which seem to require attention; and some decrines have been advanced a the bar which, in my judgment, ourth not to be passed over in slience. A question of the last importance to the States and people is here brought directly under judicial cognizance, and comprehends the principal elements in the theory of our complex system of government.

One great aim of the founders of our Government (among others) was to secure beyond contingency personal liberty, and to protect and preserve, as far as practicable, the independence and sovereignty of the respective States (without whose agency such personal liberty could not be protected and secured) as far us was consistent with the platical efficiency of the Federal Government about to be organized. A mere glance at the history of the times, at the debates in the National Conventions which adopted the Constitution, will suffice to convince us that the respective States were regarded as the essential if not the sole guar-

tional Convection that framed, and of the respective State Conventions which adopted the Constitution, will suffice to convince us that the respective States were regarded as the essential if not the sole guardians of the personal rights and liberties of the individual citizen. Mr. Justice Johnson of the Supreme Court of the United States, in the case of Martin agt. Hunter's lesses if Wheaton, 3c21, says: "So firmly "am I persunded that the American people can no "longer enjoy the blessing of a free government whenever the State sovereignizes shail be prostrated at the "feet of the Federal Government, nor the proad consciousness of equality and security any longer than the "independence of indicial power shall be maintained "consecrated and intangible, that I could borrow the language of a celebrated orator, and exclaim," I re-

"independence of judicial power shall be maintained "consecrated and intangible, that I could borrow the "language of a celebrated orator, and exclaim, 'I're-"jorce that Virginia has resisted." This is but one among a vast humber of similar expressions; but I prefer to quote it, because it was uttered at an early period in our national history; because it was uttered in a judicial opinion, and in reference to a conflict of jurisdiction between the State and federal judiciary, which did not "dissolve the Union."

It is important to recur to the elementary principles on which our Covernment is founded, more frequently, perhaps, than the apparently successful career of the Republic would naturally tend to move us. Nothing is more certain than that "eternal vigilance is the price of liberty," and that "a frequent recurrence to fundamental principles" is the only means of sustaining the Government in its original purity, and of preserving the original landmarks established by its frameers. The subjection of judicial decisions to elementary criticism will sever be denounced as audacious but by these who make content to follow precedent, even though precedent overleap the law, and become the mere pretext for usurpation. To such tests ought those who make decisions, as well as those upon whom they may operate, to be willing to subject them. It should be remembered that "error does not become "truth by being often repeated; nor does truth lose "any of its force or beauty by being seldom promulgated." Nor does vice become virtue by persistence in its practice; nor had government grow better by acquiescence in its evils; nor, where a people have adopted a written fundamental law, for the government alike of themselves and their rulers, does the infraction of that law become healed by a denial of its occur sense.

sonal transactions has been shaped under a long course of judicial determinations, courts and judges will hesitate long before they will disturb the order and establishment of things and transactions predicated upon them. Distrusting suggestions, however foreibly urged, they will pursue the diverging and unwelcome pathway with faltering step, and anxious distrust, until they are lost in the mazes of uncertainty on the one hand, or on the other they emerge into the plain highway of truth, which all may pursue with confidence and safety. But to say that such decisions preclude investigation or review, is a say that error may be made perpetual, and that the indical department is an impregnable fortr a which no force of reason may approach, and no per of truth may assait. Such a rule would have imposed restrictions upon a genius which rescued the common law from the manaces of barbariem, and gave it a vite ity equal to the progress of the

rescued the common law from the manne es of barbar-ism, and gave it a vite ity equal to the progress of the nation upon whom it operated, and a power adequate to its own regeneration.

I am willing that the decisions of the Supresse Court of the United States, in every case determined by them, within the scope of their jurisdiction, should be regarded as full and binding authority, as the law of the particular case to determined. But when it is he regarded as full and binding authority, as the law of the particular case so determined. But when it is strengously contend it that I am compelled to adopt their interpretation for Constitution and laws of the United States, and of their own powers, and the power of Courses, without thought or inquiry—to take * what is verified is written—that my own conscience and oaths must be tamely subjected to the proceduring of another tributal, governed by the seignes and oaths must be tamely subjected to the prescriptions of another tributal, governed by the same laws and bound by the same oath, not withstanding the high respect, approaching even to veneration, which I have for that high tributal—I must be permitted to say, that no mass or body of men is made by the Constitute at the keeper of my consecute, nor does it impose upon any man or body of men the tabilitation of my official oath and obligations, or the power of releasing me therefrom. When duty and obligation require a steady and undeviating adherence to authority and precedent, no one will be more from and anxional unitsiting up on such adherence. But when the like duty and obligation require a departure from such procedent and authority, in obedience to a paramount law—the fundamental law, to which each and all are equally bound—I hope to be found just as from in my adherence to the latter.

Perhaps it would not, under other circumstances, be required to reply to suggestions which connect have

Perhaps it would not, under other circ instances, be required to reply to suggestions which connect have decuted worthy of energetic expression; but considering the tone and manner in which they have been arged, it may not be unimportant to cotice one, and perhaps others, as they may incidentally occur in the discussion of the principles which have been brought to bear upon the consideration of this case.

The counsel opposed to the application of the centioner have thought proper to admonish this count of "its duty in troubled times," "and to beach faction "that it has no judicial sanctuary." If, by this, it was intended to intinate that the power or tendency of faction might become the rule of its action, or should be considered in its judgment, instead of the law as it.

thwarted by the possibility of conflict with other tributals. If the laws made "in pursuance" of the Constitution are so imperfect that their due administration necessarily leads to collision, the remedy must be sought within the scope of the legislative department, or, by the primary action of the people, within their scope, by an amendment to the Constitution itself. This Court has no power to remedy the defect. It is properly restricted to the interpretation and ad-It is properly restricted to the interpretation and administration of the laws as it finds them, and must so administrate them, or become faithless to its high and solemn functions and obligations.

solemn functions and obligations.

But, as I said on a former occasion, I apprehend none of these dangers. The line of demarkation is not very dim; and a just regard to the appropriate attributes and powers of the State and Federal sovereignties, on the part of the functionaries of each, is the safegard which the Constitution has itself provided against all attacks; which has hitherto proved adequate to every emergency, and which was deemed by its fiamers far safer and wiser, than to provide one sole, exclusive and ultimate umpire in either, which might at its option absorb the powers and sovereignty of the other.

f the other.

Indeed, it may well be affirmed, that this Indeed, it may well be affirmed, that this very division of sovereignty between the States and the Federal Government, without providing in either an ultimate and exclusive judge of the respective powers of each, but binding all alike to fidelity and obedience to the prescriptions of the Constitution, is not the least mark of the wisdom and foresight of those who framed this complex and novel system. On the o e hand, if the sole power of determining upon the respective powers of both Governments, were confided to the General Government, it might lead to eneroachment upon, and ultimate extinguishment of the State soveignties: on the other, were it confided to the State sotte powers delegated to the Federal Government might, one by one, be impaired, or swept away, until at length it would be left powerless to accomplish the eignties: on the other, were it confided to the States, the powers delegated to the Federal Government might, one by one, be impaired, or swept away, until at length it would be left powerless to accomplish the objects of its creation. But by prescribing definitively the powers delegated to the General Government, by specific grant, on the one hand, and, on the other, by declaring in their fundamental law, that the powers and attributes of sovereignty not granted or relinquished, were reserved to the States and to the people, the Federal Government was ordained to move on within its own sphere, distinctly prescribed by its charter, and the States were left in the full enjoyment and exercise of the powers of complete sovereignty with which they had not parted—each operating as a check upon the other—neither inferior, but both superme within their appropriate sphere—each quietly and almost impreceptibly repulsing the other, whenever the prescribed line should be overstepped—each, by the necessary operation of its own functions, constantly admonishing the other of its approach to the lone of demarkation, and, in its turn, being admonished of its own advance by the proximity of the other. Occasional conflict would sharpen investigation, whet official conscience, and thus lead to a correct understandance of the true boundary of ignistiction, and fieldity cial conscience, and thus lead to a correct understand-ing of the true boundary of jurisdiction; and fidelity to the great, fundamental and paramount law, to which the officers of each sovereignty are equally bound, would restrain both and all within their true

bound, would restrain both and all within their true and I reper limits.

Such was the theory of the framers of the Constitu-tion of the United States, concerning its practical working upon a free and intelligent people, already thoroughly schooled and disciplined in the principles and practice of self-government; and time and expe-rience have fully justified their opinions and their faith. faith.

The course of the argument of coursel upo

The course of the argument of counsel upon the review of the positions assumed by the justice of this Court to whom the original application of the petitioner was made, (without referring, or attempting to refer specifically to the several objections taken to those positions,) makes it proper for me to refer birdiy, and in very general terms, to some of the propositions advanced: as, that this court is bound, absolutely, by acjudications in analogous cases upon an analogous statute, by the decisions of the Supreme Court of the United States; that to the decisions of that court we are bound to yield, as to the decisions of a conceded appellate tribunal, with a "dignified judicial subordination."

I cannot yield my assert to the proposition. I do

I cannot yield my assent to the proposition. I do not so understand the relations of the respective courts. Especially, were the doctrine admitted in general, without danger or detriment, it would be fatal to recognize it in a case like this, involving the personal liberty of the citizen brought under examination through the instrumentality of the writ of Habeas Cornes.

Corpus.

I cannot here go over and attempt to sustain those positions first assumed. They are assailed by assumed authority, and by such authority only. Let authority have its just weight, on the one hand, and reason and history on the other. But, as admonished by the Father of our country, familiar with the difficulties and obstacles which interposed to the formation of our National Government, to recur frequently to elementary principles, it may not be improper, in recurrance to those fundamental principles of our Government, to refer to what would seem an obvious and primary principle by which the Federal compact is to be interpreted, and for this purpose to look to the origin as well as to the consummation of the system of government established thereby, viz: the source of Federal power, and the extent of the power derived.

The Constitution of the United States is, in its mace essential and fundamental character, a tri-partite instrument. The parties to it are: The States, The Propers, and The United States. The latter is, indeed, a resulting party, brought into existence by it, but when thus created bound in all respects by its provisions. It is practically represented by its several departments, deriving their powers directly and everally through its respective grants. It is derivative, not original. Previous to the operative vitality of the Constitution, this third party to the instrument was non-existent, and of course powerless. The other two parties, the States and the People, were preexistent, endowed with all the essential elements of sovereignty.

One great and fundamental mistake has been made Corpus.

I cannot here go over and attempt to sustain those

One great and fundamental mistake has been made One great and fundamental mistake has been made in respect to the second party to the Federal Constitution, viz: the People. This party, here spoken of, cannot be considered as the people inhabiting the whole territory embraced within the boundaries of the original thirteen States, as operating in mass, as one undivided and indivisible community. Previous to the formation of the Government of the United States, there was no such political existence; and of course, there being no such Government, there could be 10 people of such Government, or political division or organization. It is unnecessary in this connection to refer to the confederation of the States, because that did not in fact constitute a Government; nor that did not in fact constitute a Government; nor will any one pretend that the people of the confeder-ated States created the present Federal Government ated States created the present Federal Government in their capacity of a primary and ultimate source of political power, operating to institute a new and original government; because to have done this, they must have necessarily first dissolved the State Governments under which they were then living and acting, and absolved themselves from allegiance thereto. They did no such thing. The "people" mentioned in the preamble to the Constitution, and often referred to in indicial discussions, must, it seems to me, necesto in judicial discussions, must, it seems to me, necessarily mean the people of the United States; that is the people of the several States united; so many uniting as were deemed a sufficient number to warrant the institution of the new Government and render safe the delegation of certain powers before possessed by the respective States. The State Governments preexisted. If a portion of the citizens of a State had accombled to divest the State of an attribute of its several States united; so many un the respective States. The State Governments precuisted. If a portion of the citizens of a State had
assembled to divest the State of an attribute of its
sovenignty, without the assent of the State, it would
have been treason or revolution. If the people of the
whole territory of the thirteen States had combined to
divest the respective States of any of their proper
attributes of sovereignty, without the assent of the
States, it would have been closely allied to treason or
conquest. But it was neither the one nor the other.
The people referred to must be intended to mean the
resple of the respective States, operating legitimately
il rough their properly constituted authorities, in confermity with their legally established modes of procodure. As the people of the respective States, did
they adopt the Constitution. By the authority of the
States were the people called upon to adopt or reject
the Constitution. By the people of the respective
States was it adopted, and when ratified by nine
states; Const. U. S., Art. 7 (not a majority of the
people of the Union to be formed), was it to become
operative. The States, as such, were distinctly recognized through every stage of progress, from the inception to the consummation of the plan of Union; and
through the State organizations only could the first
step be taken, and through those organizations only
has the people of the Union now impress their will
up on the measures or action of the Government. Indead, the Federal Constitution provides no mode by
which, in any case, can the people of the Union affect
the Federal Government, but through the State organizations, and by the instrumentalities furnished by the
governments of the respective People, were the creators
of the third party to the compact, viz: Tar United
States.

The States, therefore, as preexisting sovereignties,
are clearly parties to the Federal compact, and, together with their respective people, were the creators
of the third party to the compact, viz: Tar United

by the extent of the individual right, and complete performance.

If the Government be complex, the means may be distributed, and the obligations of duty divided, but not so as to come short in the whole, of the object to be accomplished.

Ours is a complex system with powers distributed to each of its parts, but all of its parts together constituting an entire sovereignty, and so, of course, in duty bound, as a whole, to furnish complete protection.

Whatever powers and duties are not delegated or assigned to one department or branch of the entire sovereignty, must remain in the other; the Federal and State organizations together constituting a complete Government, endowed with all the attributes properly pertaining to a sovereign State.

If one be made up of delegated, and the other of reserved powers, the duties assigned to the former can only be coextensive with the powers delegated, and the duties of the latter must remain commensurate with the powers reserved or not delegated, and these powers adequate to every emergency not within the

powers adequate to every emergency not within the scope of the former.

The Federal Government is one of delegated pow-

scope of the former.

The Federal Government is one of delegated powers, the State Government is one of inherent or reserved powers; the former competent to act only within the sphere prescribed by the Constitution; the latter exercising all the functions of sovereignity not delegated or relinquished by that instrument.

The power to guard and protect the liberty of the individual citizen is inherent in every Government; one which it cannot relinquish, which was reserved to the States, which was never granted to the Federal Government, has never been claimed by it or for it, but has always been conceded to the States, without which they could not exist, because it is obvious that they could claim no allegiance or support from their citizens whom they had not the power to protect.

If, therefore, it is tae duty of the State to guard and protect the liberty of its citizens, it must necessarily have the right and power to inquire into any authority by which that liberty is attempted to be taken away. But the power to inquire, includes the power to decide. The right of the sovereign to demand by what authority such imprisonment is attempted, implies the obligation and duty of the person imprisoning to respond; the right to demand such authority on the one hand, implies on the other the duty to exhibit it.

The State and people thereof have delegated to the Federal Government are supon the power thus delegated, the States cannot interfere to protect its citizen, but in every other case they not only have the power, but it is their sole mn duty to interpose their authority. At the power by which the Federal Government can imprison is a delegated power, it must necessarily appear, in every case where it imprisons, that it is acting in conformity with some power delegated. It must be "nominated in the bond." Its jurisdiction is never presumed, but must always affirmatively appear.

The Constitution of the United States is the deed of grant, so to speak, expressing in written terms all the powers delegated to the Federa

grant, so to speak, expressing in written terms all the powers delegated to the Federal Government, and prohibited to the States. The States respectively retain all else of sovereignty, limited only by the local Constitutions recognition.

Stitutions prescribed by the people of each.

Therefore, to me it is plain, that when the Federal Government assumes to act in a given case, it is bound to exhibit a case within its prescribed powers, for a denial of this proposition, involves the assumption of inherent powers, derived from a source other than the States and their respective people, transcending the Constitution itself.

As, therefore, the Stitus delegated, and the Federal Government took power, limited in character and extent, the latter is at all times answerable to the former, and may be required to exhibit the Constitutional warrant by which it claims to do, or refuses to perform any given act, when so required by the primary original authority, in conform ty with the modes lawfully established.

In the Constitution of the United States sound policy quired the incorporation of a function by which the overnment thus created might be such in fact, by

In the Constitution of the United States sound pointy required the incorporation of a function by which the Government thus created might be such in fact, by executing its own Constitutional laws and decrees, and to that end be enabled to act upon individuals in all of the creative, constituent sovereignties. This could only be accomplished by the creation of a judicial department, supreme and independent within its prescribed sphere, whose process should extend to every citizen. But in giving up so much of this vital element of sovereignty as was deemed essential to the system, the States, or the people thereof respectively, carefully guarded it, hedged it about with provisions which, it was supposed, would be impassable. They prescribed its extent (that is of the judicial power of the United States) by words most carefully selected, whose import could, as was believed, scarcely be mistaken, and beyond which it was supposed no venturesome mind would rush.

"The judicial power" tof the United States, "shall extend to all cases in law or equity, arising under this Constitution, the laws and treates under or which shall be made under their authority," &c. Cent. U. S., &t. 3, &t. Martin in Hunter's Lenses, 4 Musf. 1 (Fir. Rep.)

The words "extend to," might, perhaps, on the theory of liberal or latitudinarian construction, be held to be exclusive in their import, in behalf of the judicial power of the United States, were it not for another provision of that instrument which will presently be noticed. But the very selection of the words "extend to," when we consider the extreme caution observed by the members of the National Convention which trained the Constitution, is too significant to be overlooked, and ought to admonish us against a rash assumption of exclusive jurisdiction of the subjects therein mentioned. That which merely "extends to." a particular subject or class of subjects, cannot, upon any legitimate mode of interpretation, be considered as comprising the whole of such subject or class of subjects, to

But we are relieved from the necessity of criticism upon these words, by another provision of the same instrument, which is in the following words:

"This Constitution and the laws of the United States which shall be made, in persuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Indoor in every State shall be bound thereby," &c. Const. U. S., Art. 6.

Here is a distinct recognition of the power and duty of State Judges, not to be bound by all the acts of Congress or by the judgments and decrees of the Supreme Federal Court, or by their interpratation of the Constitution," "and the laws in pursuance thereof." The requirement is, that the State Judges shall conform to the Constitution, and decide upon all questions which may arise within their inrisdiction under the same, as well as the laws of the United States "made in pursuance thereof." It will be seen that the State Judges and Courts are by no means alien to that instrument, but bound by it in the same manner as are the Federal Courts and Judges. If the words as are the Federal Courts and Judges. If the words "extend to," in a former provision, were intended to "extend to," in a former provision, were intended to vest sole, exclusive and ultimate power of that class of subjects in the Federal Courts and Judges, why should

tion upon the States or people of the States which did not raifig it.

The States derive not one single attribute of power sovereignty from the Constitution of the United States. On their separation from Great Britishes of the States. On their separation from Great Britishes of the States. On their separation from Great Britishes of the States. On their separation from Great Britishes of the States. On their separation from Great Britishes of the States. On their separation from Great Britishes of the States of Congress subject to their consideration and one of the States of the States of the States of Congress subject to their consideration and one of the States of the States of the States of the States of Congress subject to the States of the States of Congress subject to the States of the States of Congress subject to the States of Congress of the States of Congress subject to the States of Congress subject to the States of Congress subject to the States of Congress of t

served to the States, and among these reserved to the State Governments was the judicial power, being as easantial to the States for the protection of their reserved powers, as it is to the Federal Government for the protection of its delegated powers. It is equally essential to both. Without it, neither would be a government. It being equally necessary to both, it is obvious that one cannot be subjected to the other without endangering the very object of its institution and endowment. Consequently both are coequal and coordinate; as much so as are the several departments of each Government coequal and coordinate with each other.

of each Government coequal and coordinate with each other.

It has been said, and repeated with emphasis, that if State Courts are permitted to call in question the juitediction of an inferior court of the United States, (as the District Courts of the United States must be considered in reference to the Supreme Court of the United States and of the respective States, however they may be regarded in reference to the technical term "inferior courts" as used in the judicial system of England,) there must necessarily result great confusion in the interpretation of the Constitution, and different rules of interpretation prevail in different States—that the execution of the judgments of the United States Courts may be arrested by the State Courts, and "revolution or dissolution must soon follow." But a glance at the practical working of our system of Government shows these assertions not only to be unfounded in truth but most vicious in their tendency. One among the objects in distributing the powers and elements of complete sovereignty, was expressed in the preamble to the federal Constitution, "to secure "the blessings of liberty," &c., and the theory is apparent, viz: to provide such a distribution of powers as to make one branch or department operate as a check upon another, and to preclude the possibility of any one branch or department from assuming or exercising the whole or those of another, and to make each independent of the other, but all ultimately responsible to the primary source of all power.

The principle of this objection applies as well to the different departments of the Federal Government as to the courts or other functionaries of the respective States. The federal courts may be of the opinion that a penal statute of Congress is constitutional, and pass sentence upon one convicted of its violation. The Federal Government—the legislative and judicial? Again, the United States Courts may adopt rules of practice which Congress may regard as an assumption of legislative power, and repeal them or forb

their observance; of Congress such, for example, as the manner of selecting and impanneling Jurors, which the Courts will di regard. The Courts persist; Congress persists. Here is confusion indeed!—"collision" and all its attendant evils. We may go on and suppose a thousand cases in which the harmony of government may be disturbed, which would be as idle as their suggestion in support of unlimited power is repreheusible. It is enough to say that all history, as well as philosophy, teaches us that individual liberty is never safe where the power of the rulers is surrestricted, and that every guaranty of personal liberty is liable to abuse. The former condition has always resulted in despotism intolerable, the latter may expand into license, and license whirl into anarchy.

Such, however, is not the tendency of our system, nor can it occur until the officers of the Government shall become aithless to the grants and covenants of the Constitution, and the people unworthy of the liberty which their Constitution was designed and is competent to accure.

ompetent to secure.

It seems to me that the provision of the Constitu-

competent to accure.

It seems to me that the provision of the Constitution before referred to is an express recognition of the judicial power of the States, as extending to all laws of the United States, and a requisition of obedience on the part of the State Judgas, to all laws of the United States, provided they are made in pursuance of the Constitution, and not otherwise.

This view is strongly corroborated by the historical fact that many cliotts were made in the National Convention to give to the several departments of the Federal Government a supervisory control over those of the States. But all these efforts were stoutly resisted, and were ultimately relinquished. Those who are curious to trace these efforts, from their first expression in the plans of constitution introduced by Mr. Randolph of Virginia, and by Mr. Pinckney of South Carolina, through all the stages of their progress and decline to their ultimate failure, may find a pretty full record in the "Madison Papers," or the fifth volume of "Elliott's Debates." The plan failed, and experience has abundantly shown that it is to such failure and to the tenth amendment to the Constitution subsequetly adopted, that the State owe the preservation of their sovereigaty, and their position as independent, cocqual governments, in the respective spheres prescribed to themselves and to the Federal Union, and the people, the preservation of their liberties.

From these views, it is clear to me that the Federal

of their liberties.

From these views, it is clear to me that the Federal Government can only operate within the precise sphere marked out by the Constitution; that the judicial power of the Union is as much circumscribed by the Constitution as every other department of the Federal Government; that an act of Congress without the constitutional sphere would be no law; that a judicial determination without the constitutional sphere would be no law; that a judicial determination without the constitutional sphere would be no law; that a judicial determination without the constitutional sphere would be no law; that a judicial determination without the constitutional sphere would be no law; that a judicial determination without the constitution is described in the government of the State judges are "nound in question before them, so as to ascertain whether such acts are "nade in pursuance" of the Constitution; because, if so, the State judges are bound thereby, "and not otherwise.

The States never yielded to the Federal Government the guardianship of the liberties of their people. In a few carefully specified instances they delegated to that Government the power to prescribe the roles of civil conduct, and continued upon themselves the duty and obligation to protect and secure the rights of their chilzens declared to be inalienable, viz: "Life," libert, and the pursuit of haspiness."

It will readily be conceded that the main provision which the people have made in the organization of their governments for the protection of these rights, in them individually, is found in the main provision which the people have made in the organization of their governments for the protection of these rights, in them individually, is found in the judicial department. That is, the arm of sovereignty, whose aid the citizen invokes when these rights are individually invaded. The Courts are open to receive his complaint and to afford him the redress which the Constitution and laws estitle him to demand. Every citizen has the right to app t their liberties.
From these views, it is clear to me that the Federal

tis right to liberty is denied. It follows, therefore, that the power which he has the right to invoke in his behalf must posses as the right to inquire into the conformity of the authority set up over his natural rights, with the fundamental law. As the State judiciary is the power to which the guardianship of individual liberty is intrusted, it follows that it must have the right to inquire into such conformity, unrestricted by, and independent of, the power which demands his imprisement.

right to inquire into such conformity, unrestricted by, and independent of, the power which demands his imprisonment.

It would seem obvious that this power to inquire into the condition of the citizen, and to be informed of the causes of his imprisonment or restraint, has never been surrendered or relinquished by the States. It is one of the highest attributes of sow reignty. We look in vain smoog the various provisions of the Constitution to find it delegated to the United States Government or any department thereof. Nor is the reinquishment of this power found among any of those prohibited to the States. Without the tenth amendment it would be clearly reserved to the States, because it is original and inherent in every government. If so, then the apprepriate means and instrumentalities are alike reserved, inherent and original. Among such instrumentalities the write of babeas corpusis especially recognized by the federal Constitution, and a positive inhibition upon the power of the Government to interfere with its scope and functions, except in specified cases, is carefully inserted. As if it were not enough to restrict the General Government to its specified cases, is carefully inserted. As if it were not enough to restrict in General Government to its specified cases, is carefully inserted. As if it were not enough to restrict the General Government to its specified cases, is carefully inserted. As if it were not enough to restrict the General Government to its specified cases, is carefully inserted. Supplements to its specified cases, is carefully inserted. Supplements to the specified cases, is carefully inserted. Supplements to the specified cases, is carefully inserted. Supplements to its original in the federal unconstitutional power, all power on the part of congress to suspend even the buriet of the unit of habeas corpus is expressly denied, "carept in eases of "recellion or invasion." Art. 1, sec. 2, clause 2, Const. U. S.

Therefore, so far as the proceeding under this write is concerned, it is or

all questions which the case of the wit may prevail that of poleral purestiction among the manager; and that to no one can be granted exemption from the obliquetion of obedience to its mandates; and it clearly follows that every individual within the State, no matter by whatsever auttority he may claim to act, is bound to obey the writ when issued by the proper State anthority, because the highest earthly power which might otherwise at times be lost sight of, has expressly commanded such obedience, and indibted the exercise of any power which might thwart. Its purposes. No person can be exempt from obedience to its mandate, and every act of the National or State Logislature which directly or indirectly ubrogates of even suspends its benefits, (except in the case of rebellion or invasion) is, in so far, absolutely null and woid; and its execution will be enforced by all the power of the State and the Union, so long as their functionaries are faithful to their duties and oatls.

It is sometimes said that this writ is in the nature of a writ of error, so review the proceedings of as inferior court or magistrate. This is sometimes frue. But without stopping here to inquire, whether for the purposes of this writ the inferior courts of the United States be or he not inferior to State authority, as regards the office of the writ in a proceeding like this, it can hardly partake of the nature of a writ of error. Every covereign power has a right to inquire into the condition of its subjects, and the authrity or causes of their imprisonment. Bac. Abr. 425, B. 2; Cro. Jac. 435; 3 Black. Com. 131; Mod. Rep. 198. This writ is the appropriate means for such inquiry. When the State uses it to inquire whether the clitican is imprisently by virtue of a power which it has delegated to another Government, it does not bring the proceedings of that Government under review, and attempt to pronounce upon their regularity. Honly seeks to ascertain whether the case falls within the scope of any power and to a decrease of the subject ma

The State Judges and Cours are as most non-no-support the Constitution and Laws of the United States, as are the Federal Courts and Judges. I connot yield to the assumption, that the former will be lose mindful of their caths and obligations than the later; though I can readily perceive why the State Judges may be naturally more mindful of the exact line of demarkation between delegated and received the state of the s powers, because they are under the additional obliga-tion to support the Constitution and rights of the

The Provincial Freeman of Chathaun, C. W., con tains a letter giving some of the latest remarkable developments of the underground railroad practice. More remantic escapes could not be desired for a Winter evening's reading than are contained in saveral of the incidents. One of the fugitives swam on horseback the Potomac on Christmas night, his wife having been sold a few days before he fled, for no other reason than resisting the lustful designs of her owner. After crossing the river the fugitive rode forty miles, and then began his weary journey on foot.

Another is the case of a clave who lived for ten menths in the swamps, three months of the time in a cave, surrounded by bears, wild-cuts and rattlesnakes, till finally he caught up with the underground train. A third runaway is the nephew of Billy Bowlegs and a black woman, very ingenuous, and long moditating a plan of liberty. When during his flight he first entered a swamp, he would, before lying down, calculate the chances of escape from the bloodhounds. He

The newspapers are all giving, one from the other, the following note of Macaulay's, as an overwhelming proof of the historian's astonishing labors: "There is a noble, and, I suppose, unique collection of the excepters of William's reign, in the British Museum. I have read over every page in that collection."

This quotation serves, however, to prove, not so

carried with him a liquid which he had prepared, and which he says prevented the dogs from hunting him.

Hail Columbia

much the diligence of the historian, as the astonishing ignerance of those who cite it. They seem to imagin: hat newspapers were as plenty and as full of matte in William's day as in ows. They were in fact very few, and contained very little. The first daily pape did not appear till Queen Anne's reign, nor was till that reign a single English newspaper published out of London. We will venture to say that there is fa more reading matter in a file of THE TRIBUNE for a single year than in the whole of the "noble and unique" eclication, the "turning over of every leaf" of which is guessed at as such a Herculean labor Macaulay knows one thing at least-how to bait his book for gudgeons, of which few men have caught more than he.

A rew Post-Office has been established in Haun pauge, Suffolk County, L. I., which place deserves passing notice. The village contains about three hundred inhabitants, and for the past twenty years a place for the sale of intoxicating liquors has beekept. In the same period of time the writer can call to mind the death of seventeen persons whose unite ages amount to 1,447 years—the average of which eighty-five years. We think very few places or boast the same with a like population.

printing of the party of the desired